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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/754,989	01/05/2001	Troy Jervas	1765.001A	5431

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HESLIN ROTHENBERG FARLEY & MESITI PC
5 COLUMBIA CIRCLE
ALBANY, NY 12203

EXAMINER

HWU, DAVIS D

ART UNIT	PAPER NUMBER
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3752

DATE MAILED: 05/07/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/754,989

Applicant(s)

JERVAS, TROY

Examiner

Davis Hwu

Art Unit

3752

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 January 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 13-25 is/are rejected.
- 7) ☒ Claim(s) 12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5 and 6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 180, 185, and 190. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-5 and 8-11 are rejected under 35 U.S.C. 102(b) as being anticipated by McKinney (US Patent No. 5,979,785 herein referred to as McKinney '785).

McKinney '785 shows a device for making snow over a range of ambient temperatures, wherein the device makes snow through a method comprising:

- discharging a supply of pressurized water into ambient air (Column 4, lines 57-67);
- discharging a supply of pressurized air into the discharged supply of pressurized water (Column 4, lines 57-67); and

Art Unit: 3752

- controlling at least one of the discharge of the supply of pressurized water and the discharge of the supply of pressurized air to control a ratio of water to air (Column 3, lines 60-67 and Column 4, lines 1-8);
- wherein the controlling is based on ambient temperature and the controlling comprises selecting among a plurality of fluid discharge nozzles using a control mechanism wherein the control mechanism is operable to at least one of increase the ratio and decrease the ratio (Column 3, lines 60-67 and Column 4, lines 1-8) as recited in claims 2-5.

4. Claims 13, 14, 16-20, and 23 are rejected under 35 U.S.C. 102(b) as being anticipated by McKinney '785.

McKinney '785 shows a device for making snow, the device comprising:

- a discharge unit having a plurality of discharge nozzles (see Figure 3) comprising at least one water discharge nozzle and at least one air discharge nozzle as recited in claim 14;
- a control mechanism for controlling for supply of pressurized water and a supply of pressurized air to the plurality of discharge nozzles (Column 3, lines 57-67 and Column 4, lines 1-8);
- a fluid conduit for providing pressurized water and pressurized air to the plurality of discharge nozzles wherein the fluid conduit comprises an inner air conduit 26 and an outer water conduit 27 and the fluid conduit defines a tower upon which the discharge unit is elevated above the ground (see Figure 3) as recited in claims 16-20;

Art Unit: 3752

- wherein at least one fluid discharge nozzle of the plurality of fluid discharge nozzles is operatively connected to the control mechanism and at least one second fluid discharge nozzle of the plurality of fluid discharge nozzles is in direct fluid communication with a source of fluid as recited in claim 23 (Column 3, lines 55-67 and Figure 3).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over McKinney '785 in view of Ratnik et al.

McKinney '785 discloses the limitations of the instant invention including the plurality of discharge nozzles being elevated above the ground as recited in claim 7. McKinney '785 does not disclose the control mechanism operably controlled by a control unit. The patent to Ratnik et al. teaches an automated snow making device comprising a pressurized water line L1 having a water control valve V1 and a pressurized air line L2 having an air control valve V2 in which valves V1 and V2 are controlled by a control unit 16 to adjust the air/water ratio based on ambient temperature and humidity conditions. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the device of McKinney '785 by incorporating a

Art Unit: 3752

control unit to control the control mechanism as taught by Ratnik et al. in order to be able to control the required air/water ratio based on ambient conditions. Ratnik et al. do not teach the control unit 16 being adjacent to the ground as recited in claim 7. It would have been an obvious matter of design choice to have placed the control unit adjacent the ground, since such a modification would involved a mere placement of a component which is generally recognized as being within the level of ordinary skill in the art when there is no disclosure as to the criticality of such a modification.

7. Claims 15 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over McKinney '785 in view of Ratnik et al.

McKinney '785 discloses the limitations of the instant invention except for the plurality of valves. The patent to Ratnik et al. teaches an automated snow making device comprising a control mechanism including a pressurized water line L1 having a water control valve V1, a pressurized air line L2 having an air control valve V2 in which valves V1 and V2, and a control unit 16 for selecting among the plurality of discharge nozzles. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the device of McKinney '785 by incorporating valves as part of the control mechanism as taught by Ratnik et al. in order to be able to adjust the flow rates to provide the required air/water ratio. Regarding claim 22, it has been held that mere duplication and placement of the essential working parts of a device involves only routine skill in the art.

8. Claims 21, 24, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over McKinney '785 in view of Ratnik et al.

Art Unit: 3752

McKinney '785 discloses the limitations of the instant invention including the plurality of discharge nozzles being elevated above the ground. McKinney '785 does not disclose the control mechanism operably controlled by a control unit. The patent to Ratnik et al. teaches an automated snow making device comprising a pressurized water line L1 having a water control valve V1 and a pressurized air line L2 having an air control valve V2 in which valves V1 and V2 are controlled by a control unit 16 which controls the valves to adjust the air/water ratio based on ambient temperature and humidity conditions in which ambient temperature reading is provided by a temperature sensor 50 as recited in claim 25. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the device of McKinney '785 by incorporating a control unit to control the control mechanism and a temperature sensor as taught by Ratnik et al. in order to be able to control the required air/water ratio based on ambient conditions.

Allowable Subject Matter

9. Claim 12 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Dupre (US Patent No. 3,822,825) and Kircher et al. are pertinent to Applicant's invention in disclosing a method and device for making snow.

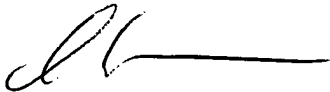
Art Unit: 3752

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Davis Hwu whose telephone number is 703-305-1663.

The examiner can normally be reached on M-F 7:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Yuen can be reached on (703)308-1946. The fax phone numbers for the organization where this application or proceeding is assigned are (703)308-7766 for regular communications and (703)308-7766 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-0861.



DDH
May 6, 2002